REMARKS / ARGUMENTS

Rejection of Claim 1 Under 35 U.S.C. § 102(b).

The Examiner rejected independent Claim 1 under 35 U.S.C. § 102(b) as being anticipated by United States Patent Number 6,367,749 issued to *Valiulis*. Applicant respectfully traverses the Examiner's such rejection of independent Claim 1 because Applicant believes independent Claim 1 as amended herein is patentably distinguishable over *Valiulis*.

Specifically, independent Claim 1 as amended herein calls for an intermediate accessory shelf that is made from a flexible material. An analysis of the *Valiulis* patent shows that the device claimed and disclosed within that patent does not require an intermediate accessory shelf made from a flexible material. Instead, the *Valiulis* device discloses shelves that are not flexible. This non-flexibility requirement is inherent as disclosed in the description of the invention as follows:

> The display apparatus shown in FIG. 1 comprise several shelf members 26 attached to the tubular support, the shelf members having a plurality of wire hooks 27 attached thereto. The shelf members and wire hooks are adapted to mount various product or merchandise 28 above the ground for viewing by the consumer. (U.S. Patent No. 6,367,749, column 3, lines 5-10).

From this description, the shelf 26 of the *Valiulis* device must be stiff enough to allow the wire hooks 27 to support product or merchandise. Because the shelf 26 is only attached to the tubular support 22 at the central area of the shelf 26, the outer edges of the shelf 26 to which the wire hooks 27 are attached must be very stiff to support the

cantilevered load of the merchandise the wire hooks 27 are required to support. This stiffness inherently requires shelf 26 to be made from a non-flexible material. Because the intermediate accessory shelf of the presents application expressly requires the shelf to be made from a flexible material, the device shown in *Valiulis* does not disclose all of the elements of independent Claim 1 of the present application.

Because the *Valiulis* device does not disclose all of the elements in independent Claim 1 of the present application, Applicant respectfully suggests that independent Claim 1 is not anticipated by *Valiulis* under 35 U.S.C. § 102(b) and that the Examiner's rejection of independent Claim 1 on that basis should be withdrawn.

REJECTION OF CLAIMS 2, 3, 4, AND 5 UNDER 35 U.S.C. §103(a).

The Examiner rejected dependant Claims 2, 3, 4, and 5 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number 6,367,749 issued to *Valiulis* in view of United States Patent Number 5,570,795 issued to *Colgrove.* Specifically, the Examiner states that *Valiulis* teaches the device claimed in the present application absent the three leg tripod support and that *Colgrove* teaches the three leg tripod support.

It is believed that the Examiner's rejection of dependant Claims, 2, 3, 4, and 5 is overcome by the amendment to independent Claim 1 as described herein. The amendment to independent Claim 1 adds an element that is not disclosed or suggested

in any of the art cited by the Examiner. Because a rejection under 35 U.S.C. §103(a) must show that the cited art discloses or suggests all of the elements of the rejected claim, a *prima facie* case of obviousness sufficient to reject dependent Claims 2, 3, 4, and 5 cannot be established based upon the art cited by the Examiner.[1] Further, dependent claims are not obvious if they depend directly or indirectly from an independent claim which itself is not obvious.[2] It is suggested that because independent Claim 1 as amended herein is not obvious, dependent Claims 2, 3, 4, and 5 are also not obvious.

Therefore, Applicant believes the rejection of dependent Claims 2, 3, 4, and 5 under 35 U.S.C. §103(a) have been overcome and respectfully requests that the Examiner withdraw the rejection of independent Claims 2, 3, 4, and 5 as being obvious.

CONCLUSION.

Claims 1 - 20 remain in the application.

---

[1] The Manual of Patent Examining Procedure at § 706.02(j)states, "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, ***the prior art reference (or references when combined) must teach or suggest all of the claim limitations***. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed., Cir 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria." (emphasis added.)

[2] The Manual of Patent Examining Procedure at § 2143.03 states, "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988)."

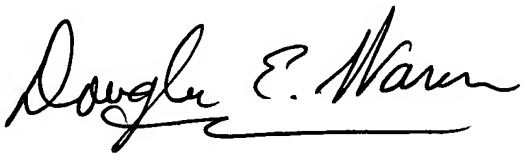
Claims 7 - 20 were allowed generally by the Examiner in the First Office Action, but were objected to because Claim 6 depended from a rejected claim.

Claim 1 is amended herein.

In light of the above discussion, Applicant believes this Amendment A overcomes the Examiner's rejections of independent Claim 1 under 35 U.S.C. § 102(b). Applicant also believes that this Amendment A overcomes the Examiner's rejections of dependent Claims 2, 3, 4, and 5 as being obvious under 35 U.S.C. § 103(a).

Therefore, it is suggested that Claims 1 - 20 in the present application constitute allowable subject matter and should be favorably considered by the Examiner. It is requested that a timely Notice of Allowance be issued for those Claims.

Respectfully submitted,



Douglas E. Warren, Reg. No. 52,344
Polster, Lieder, Woodruff
& Lucchesi, L.C.
12412 Powerscourt Drive
Suite 200
St. Louis, Missouri 63131
Phone: 314-238-2400
Facsimile: 314-238-2401